IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

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W.P.No.13510 of 1997 and W.P.No.25664 of 1998

W.P.No.13510 of 1997 :

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Between:

Sri N.Paramanandam, S/o T.Nagappa,
R/o P.No.25, Road No.4, Maruthi Nagar, R.R.Dist.

..... PETITIONER

AND

1 ECIL, Rep by its Chairman & Managing Director.

2 The Station House Officer, P.S.Kushaiguda, R.R.Dist.
3 Mr.S.Seetha Rama Rao, Personal Manager, ECIL.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of certiorari or any other appropriate writ order or direction, directing calling for the records connected with ref: NO:ECIL:PG:ER:97:062 dt.18/2/97 and ECIL:PG:26835:93 dt.23/5/92 and quash the same as illegal and unconstitutional and void and pay all back wages and consequential benefits

Counsel for the Petitioner : MR.K.S.MURTHY

Counsel for Respondent No.1 & 3 : MR. K. SRINIVASA MURTHY, SC

Counsel for Respondent No.2 : None appeared.

W.P.No.25664 of 1998 :

Between:

N.Paramanandam, S/o. T.Nagappa,
R/o. Plot.No.25, Road No.4,
Mathura Nagar, R.R.Dist, Hyd.

..... PETITIONER

AND

1 Electronic Corporation India Ltd., rep.by it's Chairman & Managing

Director, ECIL &Post, Hyd-500 062.
2 Sri. A.P.Gupte,SPO,CSG &Enquiry Officer,ECIL, HYD-500 062.
3 Sri Seetha Rama Rao, Manager Personnel ,Ecil, Hyderabad-500 062.

..RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ order or direction, directing the 1st respondent to Reinstate me into service with retrospective effect from 21.2.1992 in view of the judgment dt.30.9.1997 rendered in CC.No.400/92 on the file of the Learned Judicial First Class Magistrate, North & East, R.R.Dist. acquitting me honourably and direct the respondent No.1 to pay me all consequential benefits accrued to me including promotion etc., and Further direct respondent 1st to 3rd to pay adequate compensation to me.

Counsel for the Petitioner : MR.K.S.MURTHY

Counsel for the Respondents : MR.K.SRINIVASAMURTHY, SC

The Court made the following :

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

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W.P.No. 13510 of 1997

and

W.P.No. 25664 of 1998

COMMON ORDER:

These two Writ Petitions are filed by the same employee, who was removed from service, questioning the order of his removal, which was confirmed by the appellate authority, and seeking the relief of reinstatement in view of the Judgment of the Criminal Court acquitting the petitioner of the similar charges for which he was removed from service in the departmental proceedings.

2. According to the petitioner, he was appointed in the respondent Corporation as clerk-cum-typist in March 1972. Subsequently, he was posted to oversee the work of the Drivers in the transport department. Later, the petitioner made a representation to the authorities of the respondent-Corporation to consider his claim for promotion over his junior. It is stated that due to the evil intentions of the 3rd respondent, who is a co-employee in the same Corporation, and under the influence of one Sri K.V.L.N.Rao, Senior Accounts Manager, the petitioner was falsely implicated in Cr.No.143 of 1990, which was registered for missing cheques issued by the 1st respondent Corporation. As on the date when the petitioner was charge sheeted, he was working as Dispatch Clerk in the Central Dispatch Section. As it came to light that three cheques, which were dispatched to three different parties by the respondent-Corporation were not received by the said parties, and in fact, the covers in which those cheques were sent were returned to the Corporation, which is evident by the entries in the register maintained by the Central Dispatch Section, but, however it was found that they were not received by the concerned sections of the Corporation. Therefore, a complaint was registered with the police. In fact, as per the evidence of PW-1 in the criminal case, who is a Retired Deputy General Manager of the 1st respondent Corporation, the Corporation did not want to pinpoint anybody or accuse anybody for the loss of cheques and left them for investigation by the police. But, however, subsequently, the petitioner was arrested on 24.5.1990, in pursuance of the complaint registered by the Corporation on 11.5.1990. Finally, criminal

proceedings were initiated after completing the investigation, not only against the petitioner but also against two others, who are outsiders. While the said proceedings are pending, the department has taken up the enquiry and issued a charge sheet on 25.5.1990 framing certain charges for the unauthorized absence. Again a second charge sheet was issued on 11.8.1990 framing five charges, which reads -

a. Fraud or dishonesty in connection with the Company's business or property;
b. Negligence or neglect of duty;
c. Indulging in corrupt practices;
d. Absence from duty without leave or without sufficient cause;
e. Giving false information concealing the facts.

3. Thereafter, an Enquiry Officer was appointed to conduct the regular departmental enquiry. The Enquiry Officer has submitted his report holding that only the following three charges are found to have been proved against the petitioner

a. Fraud or dishonesty in connection with the Company's business or property;
b. Indulging in corrupt practices;
c. Giving false information concealing the facts.

4. Basing on the said enquiry report, the petitioner was given a notice proposing to take action for which the petitioner also submitted his explanation. Thereafter, the Chairman and Managing Director, being the disciplinary authority passed orders of removal, against which an appeal was filed to the Board, which was also rejected by an order, dated 18.2.1995. Hence, the petitioner filed the first Writ Petition.

5. During the pendency of the first Writ Petition, the trial in the criminal case was completed and the Court passed its Judgment in which an acquittal order was passed holding that the prosecution has not placed any foolproof evidence that the petitioner had fraudulently took two cheques from the returned postal covers and with the help of A1 and A3, he misappropriated the amounts. Therefore, the petitioner filed the above second Writ Petition seeking the order of reinstatement in view of his acquittal for the alleged offence by the criminal Court.

6. The learned counsel for the petitioner contended that there was no clinching

evidence to record a finding against the petitioner showing his involvement not only in tampering the returned covers but also fraudulently removing the cheques and in their encashment by opening fictitious accounts. It is contended that the Enquiry Officer, though found that there are innumerable defects in the maintenance of dock work in the Central Registry, but, however held that the petitioner is responsible on the premise that as per the evidence of even the defence witnesses that anybody could tamper the returned covers, and that anybody would not exclude the petitioner. The Enquiry Officer also found that there is nothing specific to show that the petitioner is not involved in tampering of covers. According to the learned counsel, it is for the management to prove that the petitioner is responsible by positive evidence in the alleged tampering of the covers as well as in removing the returned cheques and encashing them. There is neither such categorical evidence nor such a finding was recorded by the Enquiry Officer. In the absence of any specific findings showing that the petitioner is connected either to the persons who have opened the fictitious accounts and encashed the cheques or any connection with the persons, who admittedly withdrew the amount. Further, nothing was elicited to show that the petitioner was responsible for handing over the cheques to third parties. The learned counsel also contended that the return of the covers is evidenced by the entries made by the petitioner in the Central Registry, which was maintained by the petitioner. It is also his case that after the entries are made, the Covers are put in the respective pigeonholes for the delivery of those covers in the respective sections or groups by the messengers. As far as the delivery aspect is concerned, the petitioner is not responsible. Further it is his case that while delivering the returned covers, the respective sections have to issue acknowledgments and those acknowledgments are maintained in a file and though the petitioner sought for production of the said file, the respondent did not produce the same and even the Enquiry Officer rejected the claim of the petitioner, as if it was irrelevant for the purpose of enquiry. It is also contended that had the acknowledgment file produced, it would have been evident that those covers must have been delivered in the respective sections, in which case the persons in the respective sections must be held responsible and not the petitioner. The learned counsel also contended that the enquiry officer relied upon

certain communications given by the Inspector of Police during the course of investigation, which was illegal, to conclude against the petitioner. In fact, the Enquiry Officer relied upon the evidence of PW-2, who has stated that in his presence the petitioner had confessed to the police authorities that he was responsible for the tampering of the covers as well as for the removal of the cheques. But, when he was examined in the criminal case, he did not depose to that effect, and, on the other hand, his evidence is, “The Inspector of Police was present, none else whom I can identify”, which clearly shows that what he had deposed before the department is not correct. The learned counsel also contended that if the petitioner had the intention of tampering as well as removing the cheques from the covers, he would not have made any entries in the Register showing the receipt of returned covers. The Enquiry Officer failed to consider these aspects. It is also contended that the petitioner raised all these objections before the disciplinary authority as well as the appellate authority, but both the disciplinary authority and the appellate authority rejected the contentions as not tenable without considering the objections at all. Therefore, the order of removal, as confirmed by the appellate authority, is liable to be set aside. The learned counsel also contended that though in the departmental proceedings the issues were decided against the petitioner, but the competent criminal Court, which had gone into the charges framed against the petitioner along with two others, and on appreciation of the evidence adduced by the prosecution recorded a clear and categorical finding in favour of the petitioner and therefore, acquitted the petitioner. In the light of the said findings recorded by the competent Court, the order passed by the respondent-Corporation on certain assumptions, is clearly illegal and unsustainable. The learned counsel also contended that non-production of acknowledgment file, as sought for by the petitioner, would amounts to denial of opportunity to the petitioner, which would vitiate the entire enquiry, and therefore, even on that count also the impugned order is liable to be set aside.

7. The learned counsel for the respondent-Corporation, on the other hand, supported the order of removal. It is also contended that both the disciplinary authority as well

as the appellate authority have considered the contentions raised by the petitioner and passed the impugned order. Therefore, the petitioner is not entitled to claim any relief.

8. From the above, the issue to be considered is whether the petitioner is entitled to any relief against the impugned order of removal.

9. From the material on record it is clear that originally a complaint was lodged with the police on 11.5.1990 without specifying the names of any of the employees as to the tampering of the covers as well as removal of the cheques, which were sent by the Corporation to the addressees and returned undelivered. The Corporation found that three cheques were removed from the returned/un-delivered covers and two of them were encashed, while the third one was attempted to be encashed, and at that point of time the person, who attempted to encash was caught by the police in Bombay, but it is not known what had happened to the persons, who were caught, and it is also not brought on record whether the persons, who were arrested had disclosed the names of any of the employees of the respondent-Corporation, who are responsible or cooperated with them for removing the said cheques. Similarly, the material on record also found that one Muneer, and Venkata Ramana Rao were responsible for opening two fictitious accounts, one in Prudential Cooperative Bank, and another in A.P. Mahesh Cooperative Bank through which two cheques were encashed. But no evidence was brought on record showing whether any of these persons, who had opened the bank accounts, disclosed the name of the petitioner as responsible for obtaining the cheques by them. In fact, during the course of hearing the learned counsel referred to the enquiry report, which recorded the defects in the functioning of the Central Registry. The relevant portion of the observations recorded by the Enquiry Officer reads, “There appears to be defects, deficiencies, loopholes and lapses in the functioning of Central Registry. The Management will have to take serious view of this and tone up the functioning of the Central Registry.” The said finding was recorded in the light of the incidents brought on record by the witnesses, and the relevant portion is as under: -

> “ They have also pointed out certain incidents such as one cheque of Hindustan Petroleum Company wrongly delivered at ECIL and sent to FAG.

> FAG has encashed it also. Though inward register of Central Registry shows entry, there was no recorded evidence in FAG dispatch about its receipt. In another case one PF cheque of ex-employee was returned back undelivered, entry was made in Central Registry and sent to FAG. But there was no record in FAG dispatch. During 1982 a bunch of registered letters containing some cheques were found underneath the last drawer of Shri Chandrakanth's table. Some letters sent to CSG-3 were found in the dust bin of CSG-3. One import license sent by Joint Controller of Imports & Exports found its way to dust bin of Security. All goes to show that it is not well in Central Registry"

10. Another aspect is that even as per the evidence adduced on behalf of the defence shows that the Central Registry is a place, which is accessible to anybody. It is not locked during the lunchtime. Any employee or even an outsider could come inside and pick up letters. Postman normally comes during lunchtime. Whosoever amongst Central Registry staff is available receives the dak. Dealing clerks/Assistants make entries in the registers and keep them on the tables. Helpers take the dak to the respective divisions/sections. Helpers do not always get acknowledgments and brought back and kept on the racks. Therefore, according to the petitioner, anybody in the section apart from outsiders can cause loss to the covers or the cheques. In fact, to prove whether those covers were delivered to the respective sections, the petitioner sought for production of acknowledgment file, which was handled by the petitioner during his tenure. But the said file was not produced and in the proceedings of the enquiry, the Enquiry Officer recorded that since the representative of the management has produced certain documents showing the receipt of the undelivered registered letters, this document is not of much relevance. According to the petitioner, if the acknowledgment file is produced and if there are acknowledgments showing the delivery of those covers to the respective sections, it would prove that the petitioner is no way responsible for their missing and such a valuable evidence, which was in the custody of the management, was not produced in spite of his request and the Enquiry Officer rejected it as of not much relevance.

11. The learned counsel relied upon a Judgment of the Supreme Court in ***State of M.P. v. Chintaman*** . In this case, a constitutional Bench of the Apex Court had an

occasion to consider the compliance of the principles of natural justice, and Art.311(2) of the Constitution. In this case the State failed to produce a file relating to one of the charges levelled against the petitioner therein that he had accepted the bribe and released certain persons on the recommendations of the District Superintendent of Police. The Apex Court while affirming the view taken by the High Court affirm, held it is hardly necessary to emphasise that the right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the Enquiry Officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the enquiry had not been held in accordance with rules of natural justice.

I n ***Tirlok Nath v. Union of India*** it was held that non-supply of copies of the documents relied upon by the Enquiry Officer amounts to denial of reasonable opportunity. This Judgment may not be of any help to the petitioner's case and not relevant for the purpose of deciding the issues in the present writ petitions.

In ***Kashinath Dikshita v. Union of India*** the Apex Court held that the non-supply of copies of statements of witnesses and copies of the documents relied upon by the disciplinary authority, the burden is on the Government to show that no prejudice had caused to the employee by such non-supply of the documents. In this case the preliminary enquiry was conducted, and in all as many as 38 witnesses were examined, and 112 documents were produced to substantiate the charges. When the employee sought for copies of those documents, they were not supplied. Therefore, it was held that, in the facts and circumstances of the case, we find it impossible to hold that the appellant was afforded reasonable opportunity to meet the charges levelled against him.

In ***State of U.P., v. Shatrughan Lal***, the Apex Court held that even if the documents sought for by the employee, which are relied upon by the employer were not furnished, but it should be communicated in writing giving permission for inspection of those documents. In the absence of such communication mere observation that he can have access to the records for inspection is unsustainable.

12. Though all the above Judgments were dealing with identical facts as in the present case, but the sum and substance is that the denial of relevant documents, which are in the custody of the employer/management would amounts to violation of the principles of natural justice. Here admittedly, the respondent Corporation maintained acknowledgments file in the Central Registry showing delivery of the returned covers to various sections. According to the petitioner, if the said file had been produced, it would have proved that those covers for which the petitioner is charge sheeted were delivered to the respective sections. In addition to that, it is also the case of the petitioner that a competent criminal Court, on appreciation of the evidence adduced on behalf of the prosecution, found that the prosecution failed to prove the case for which the petitioner was charged and the petitioner was acquitted of the said charges. Further, as already observed neither the disciplinary authority nor the appellate authority had, in fact, considered the contentions raised by the petitioner elaborately except rejecting it with a single word untenable.

13. Under the above circumstances, the impugned order of removal passed against the petitioner is unsustainable. Therefore, the same is set aside accordingly.

14. The period during which the petitioner was out of service is directed to be treated as on leave without pay, if no leave is available to his credit. However, the petitioner is entitled for all other attendant and consequential benefits.

15. Accordingly, both the writ petitions are allowed. No costs.

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S. Ananda Reddy, J.

Dt. 2.12.2004

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, the Second Day of December, Two Thousand and Four.

To

1 Electronic Corporation India Ltd., rep.by it's Chairman & Managing

Director, ECIL &Post, Hyd-500 062.

2 The Station House Officer, Kushaiguda Police Station, R.R.Dist.
3 2CD copies